REGISTERED No. M. 4631.

GOVERNMENT OF KERALA

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. III.] Trivandrum, Friday, 17th January 1958 [No. 5.

ELECTION DEPARTMENT

NOTIFICATION

No.547|57|EL1. *Dated, Trivandrum, 17th January 1958.*

Notification No. 82|239|57, dated 11-1-1958 issued by the Election Commission, India together with the order of the Election Tribunal, Ernakulam mentioned therein is published below for general information.

By order of the Governor,

P. NARAYANASWAMI,

Additional Secretary and Chief Electoral Officer.

ELECTION COMMISSION, INDIA.

1, Aurangzeb Road
New Delhi.
Pausa 21, 1879 Saka/January 11, 1958.

NOTIFICATION

No. 82/239/57.—WHEREAS the election of Shri George Thomas Kottukappalli, Palai as a member of the House of the People from the Moovattupuzha Parliamentary Constituency of that House was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri R. T. Joseph son of Capt. R. T. Thomas I. M. S., of Ramapurath House, Kizhathadivoor, Palai and Shri Joseph M. J., son of Ouseph of Mannoranparampil House, Edappady, Bharananganam;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

By order,

A. Krishnaswamy Aiyangar,
Secretary to the Election Commission,
India.

Before the Election Tribunal, Ernakulam

Monday the 23rd day of December 1957.

Present

Shri. C. Kunhi Raman, B. A. B. L., Barrister-at-Law, Judge, Election Tribunal.

ELECTION PETITION No. 239 OF 1957.

1. Mr. R. T. Joseph .. } *Petitioners.*
2. Mr. Joseph M. J. .. }

By advocates Shri P. R. Sankaranarayana Iyer, and Shri T. R. undara Iyer.

George Thomas Kottukappalli .. *Respondent.*

By advocates Shri. Panampilli Govinda Menon and Shri. P. Narendra Menon.

Election petition under section 81 of the Representation of the People Act, 1951, filed before the Chief Election Commissioner of India on 24th April 1957 (by registered post) and referred to this Tribunal at Ernakulam constituted under sections 86 and 88 of the Representation of the People Act 1951.

This petition coming on for final hearing on 10-12-1957 and 16-12-1957 in the presence of the first petitioner (in person) for the petitioners and of Shri P. Govinda Menon, Advocate for the respondent, as having stood over for consideration to this day, the Tribunal pronounced the following

ORDER.

The two petitioners in this case describe themselves as electors entitled to vote at the general election held in March 1957, their names having been entered in the electoral roll of the Muvattupuzha Parliamentary Constituency and Poonjar Assembly Constituency. They pray that the election of the respondent to the Lok Sabha be declared void with all consequential orders. The main reasons given in the election petition in support of the prayers are briefly as follows: The petitioners say that the election of the respondent has been illegally obtained. They allege the corrupt practice of bribery, within the meaning of clause (1) of section 123 of the Representation of the People Act (which will hereinafter be referred to as the Act), which, according to them, was committed by the respondent through his agents and deputies or other persons with his and his election agents' consent. According to them, there was an express offer of pecuniary or other gratification made to a rival candidate, Mr. Manuel T. Paikeday, with the object of inducing him to withdraw from being a candidate or retire from contest to the Parliamentary seat. This gentleman

had been nominated for election both to the Parliament and the local (Kerala) Legislative Assembly from the Muvattupuzha and Poonjar Constituencies. After preliminary negotiations, it was, according to the petition, ultimately agreed that the respondent would arrange to meet the election expenses of Mr. Paikeday for the assembly seat and to compensate him for his security deposit and expenses so far incurred. Mr. Paikeday accordingly filed his notice of retirement from contest of the Parliamentary seat and also filed with the Returning Officer for the Poonjar Assembly Constituency (Assistant Excise Commissioner, Kottayam), a formal document appointing Mr. Varkey Mathew Vellukunnel as his election agent. The latter is alleged to have paid certain sums of money to the persons who were in charge of Mr. Paikedays' election office at Palai. It is suggested that Varkey Mathew received these amounts from the respondent.

2. The second ground alleged in the petition is the corrupt practice of general and particular undue influence within the meaning of section 123 (2) of the Act alleged to have been committed by the Bishop of Palai, Mar Sebastian Vayalil, and by many priests under his jurisdiction by interfering with the electoral right of voting of the Roman Catholic voters who, according to the petitioners, form the majority of voters in the constituency and in particular in the constituency of Thodupuzha and Poonjar. The undue influence is stated to have been exercised mainly by the issue of a diocesan bulletin (Pastoral Letter No. 32 dated 20th February 1957) addressed "to all Priests, Monks, Nuns and all our dear faithful under our authority". According to the petitioners, this bulletin was compulsorily read and explained by the priests in the numerous churches and chapels in the Bishops diocese. During solemn service of Mass on the 24th February, which was the Sunday immediately preceding the polling date, (2nd March 1957) all the persons to whom the bulletin was addressed, according to the petitioners, were enjoined to vote only for the congress candidates without expressly mentioning the word 'congress'. Every member of the congregation was called upon to go and exercise the right to vote. This, according to the petitioners, amounted to misleading and coercing them under fear of sin and compelling persons who would otherwise have refused to go and vote to exercise their franchise. Reference is made to the other clauses of this bulletin, all of which, according to the petitioners, amounted to spiritual and mental intimidation and coercion exercised in the interests of the respondent at his intance and at the instance of his agents and partisans. This bulletin is alleged to have influenced mainly the womenamong the catholic voters and the result of the election was materially affected in favour of the respondent and his companions of the Poonjar and Thodpuzha Assembly Constituencies with whom he is stated to have carried on a joined election propaganda.

3. It is then alleged that the corrupt practice under section 123 (3) was also resorted to by making a systematic

appeal, particularly to the Catholic voters, on the ground of religion and community, by a catholic Malayalam daily newspaper called the "Deepika" which was under the management of Catholic priests and published from Kottayam. The petitioners alleged that this was subsidised materially by the respondent.

4. The fourth corrupt practice alleged in the petition is under section 123 (5) of hiring and procuring of motor vehicles for conveying the electors to or from polling booths. This, according to the petitioners, was committed extensively by the respondent's agents and partisans with his and his agents' consent. Particulars of the voters who were thus taken are given in the petition which will be referred to at the appropriate place in the course of this order. Mainly on these grounds the petitioners pray that the election of the respondent may be declared to be void.

5. The respondent appears by Mr. Panampilli Govinda Menon and resists this petition. In the written statement filed by him, he puts the petitioners to strict proof that they are electors competent to present the petition. He pleads that he is validly elected and denies the corrupt practices mentioned in the petition. He pleads that he had no election agent at the election and denies that any offer of pecuniary or other gratification was made by him or at his instance, either directly or indirectly, to Mr. Paikeday. He has not made any attempt to induce Mr. Paikeday to withdraw from the contest. He denies that Mr. Eapen Cheerankuzhi is a longstanding henchman, employee or agent of his and states that this person is an employee of the East India Agencies (Private) Ltd., of which the respondent is the Managing Director. He denies that any approach was made by him or on his behalf to Mr. Paikeday with the offer of any pecuniary or other gratification. There were no negotiations, according to him, between himself and Mr. Paikeday either directly or indirectly. That Mr. Paikeday retired from the contest in the Muvattupuzha Parliamentary Constituency is conceded, but the respondent denies that the retirement was due to any offer of pecuniary or other gratification. He pleads that Varkey Mathew Vellukunnel is the supporter and active worker of Mr. Paikeday and that he opposed all candidates belonging to the Congress Party. No offer was made by this gentleman to Mr. Paikeday with the knowledge and consent of the respondent, nor was there any communication between the respondent and this gentleman for securing the retirement of Mr. Paikeday. He pleads that Mr. Paikeday retired of his own accord and not as a result of any inducement from anybody. That retirement was in no way advantageous to the respondent because it resulted in consolidating all the anti-congress elements, thereby strengthening the position of the respondent's opponents in the election. According to the respondent, that was the object of Mr. Paikeday's retirement. The respondent pleads that he is a congress

candidate and that he was supporting all congress candidates in the Assembly constituencies during the last election. The allegations in paragraph 3 (1) of the petition are totally denied. The respondent denies that there was any undue influence exercised by the Bishop of Palai and priests under his jurisdiction. He pleads that the petition does not give particulars regarding the corrupt practice as contemplated by section 83 of the Act. He admits that the Bishop of Palai had issued a pastoral bearing date 20th February and numbered 32, but pleads that the substance and effect of the said pastoral have been distorted in the petition. The publication or the reading of that document in churches did not directly or indirectly interfere with the free exercise of any electoral right. The said document did not have the effect of misleading or coercing any voter under fear of sin to exercise the right of franchise. The respondent denies that there was an abuse of religious and spiritual power and influence of Bishops and priests and pleads that the publication of the pastoral did not amount to spiritual or mental intimidation and coercion. The respondent denies that the publication of this document has materially affected the result of the election. He denies that the pastoral was issued at his instance or of his agents or partisans and denies that the Bishop of Palai exercised any undue influence in the election. The respondent denies the allegations in para 3 (3) and pleads that these allegations are vague and indefinite and do not contain the particulars required by law. He denies that he had subsidised the newspaper 'Deepika' and denies that Deepika and the priests under the Bishop of Palai had committed any corrupt practice. The respondent further denies the corrupt practice of hiring or procuring of any vehicle for conveying any voter to or from the polling station. There are also specific denials regarding the two motor vehicles mentioned in the petition. The respondent pleads that he had given specific orders to all his agents not to use any motor vehicles to convey voters to or from polling stations and if anyone had contravened that order it was not with his consent. There is an alternative plea that the instances of corrupt practice under section 123 (5) mentioned in the petition are in any event of a trivial and limited character. The respondent pleads further that there is no *bona fides* in filing this petition and claims that he is entitled to costs.

6. The following issues were framed for trial :—

1. Is the petition not sustainable ?

2. Was the election of the respondent illegally obtained as alleged in paragraph 3, clause (1) of the petition?

3. Is the election vitiated by corrupt practice of the respondent or his agents or deputies or other persons as contemplated by section 123 of the Representation of the People Act, for the reasons set forth in paragraph 3 (2) of the petition ?

4. Are the averments in sub-clause (3) of paragraph 3 not specific as required by section 83 (1) (b). If not, do they have the effect of invalidating the election?

5. Was there an offer of inducement to Mr. Manual T. Paikeday to withdraw his candidature for the election to Parliament or retire from the contest ?

6. Was the retirement of Mr. Paikeday from the contest ceased in the circumstances mentioned in paragraph 3 (1) (a) and (h) of the petition ?

7. Is Mr. Paikeday a necessary party to these proceedings?

8. Is the election vitiated by undue influence under clause (2) of section 123 of the Representation of the People Act for the reasons set forth in paragraph 3, sub-clause (2) of the petition?

9. Does the Diocesan Bulletin, No. 32 (Pastoral letter) of 20th February 1957 amount to exercising undue influence over the electorates and mislead or coerce the electorate by spiritual or mental intimidation within the meaning of section 123 of the Representation of the People Act, 1951? Does this Bulletin vitiate the election as alleged in the petition.

10. Are the averments in clause 3, sub-clause (3) of the petition too vague to be considered by the Tribunal? Do they fall within the purview of sub-section 3 of section 123 and if so are they sustainable?

11. Are all or any of the allegations of corrupt practice mentioned in paragraph 3 (4), sub-clauses (a) and (h) true? Do they amount to corrupt practice under section 123 (5) of the Act?

12. If any motor vehicles were used for conveying electors to and from polling stations, were they in contravention of the direction given by the respondent?

13. Are the instances of corrupt practice set forth in paragraph 3 (4) of the petition of a trivial and limited character?

7. Both the parties have called evidence to substantiate their respective contentions. After the evidence on both sides was closed, Mr. Govinda Menon, learned counsel for the respondent, addressed arguments, because neither the petitioners nor their advocate appeared on the 10th December 1957 at 11 A. M. which, by the consent of the parties and their learned counsel, was fixed as the date and the time for addressing arguments. In view of the provisions of Order XVII, rule 2, of the Code of Civil

Procedure, which applies to proceedings before this Tribunal, I called upon Mr. Govinda Menon to address arguments on behalf of the respondent. While he was so engaged, the first petitioner who is the active participant on behalf of the petitioners in this trial, entered the court hall and was engaged in noting the contentions which the respondent's learned counsel was urging. After the respondent had finished his arguments, the first petitioner wanted time to submit written arguments, since he represented that his advocates were not available. Mr. Sundara Iyer, the last advocate who appeared for him, was stated to be not quite well. He had produced a letter from him in 9-12-1957 praying that his absence may be excused, but there was no request made in that letter for any adjournment of the proceedings to enable him to prepare arguments. The first petitioner asks for time to prepare written arguments and submit them to the Tribunal and this opportunity was granted to him by the case being adjourned to the 16th December at 2-30 P. M. when he undertook to appear with written arguments.

8. Accordingly, on the 16th the first petitioner appeared in the afternoon and in the presence of the respondent's learned counsel he read out the written arguments that he had prepared and brought to the court. See section 91 of the Act. This was listened to patiently and he was informed that after considering all the interesting points raised by him in the written arguments, notice will be given of the date on which final orders in the petition would be passed. The case was accordingly adjourned for final orders.

9. Before the adjournment was granted, it must be stated the respondent's learned counsel, in answer to a query, stated that he was not pressing the defence about the qualifications of the petitioners to file this petition. He had raised a contention that he put the petitioners to the strict proof of their being voters in the constituency and thereby were competent to file this petition. He stated, after the first petitioner had finished reading his written arguments, that he was now satisfied that both the petitioners were voters in the constituency and, therefore, that particular plea of his was not pressed. In the circumstances, the first issue must be struck off, as it is conceded that both the petitioners are voters in the constituency who are competent to file this petition.

10. In answer to another query, the respondent's learned counsel also stated that he was not pressing his plea that Mr. Manuel T. Paikeday, advocate of the Kerala High Court, is a necessary party to these proceedings. Therefore, issue No. 7 also is struck off.

11. It will be seen from the written arguments of the first petitioner that he urges a point as to the relevancy of the issues that were raised at the trial. I quite agree with him that some of the issues are not relevant, but it was his then advocate Mr. Ramanatha Pillai who appeared on the date on which the issues were framed, that insisted upon all the issues being retained and that is the reason why they were left intact.

12. Before considering the issues seriatim, it may be stated in the interests of clarification of the points urged on behalf of the respective parties, that there are four main contentions urged in the petition for supporting the case that the election of the respondent must be set aside. These are (1) alleged bribery by the respondent of Mr. Manuel T. Paikeday, one of the rival candidates to Parliament; (2) undue influence exercised by the ecclesiastical authorities headed by the Bishop of Palai who had issued a pastoral which has been marked as Ext. A. The petitioner's contention is that by the publication of this document the respondent had brought about undue influence by the clergy on the majority of the voters who are members of the Roman Catholic Church in the Parliamentary constituency; (3) support of the respondent's candidature on communal and religious grounds by the Deepika, a Malayalam newspaper published by the Catholic Clergy of Kottayam. The suggestion made is that the respondent had heavily subsidised this newspaper to bring about this propaganda; (4) the fourth and last complaint made in the petition is that two motor vehicles, bearing index numbers, T. C. K. 1621 and T. C. K. 2909 were used on behalf of the respondent for conveying voters to polling booths. The consideration of these four points would amount to practically disposing of the case on the basis of the issues that were framed at the Trial.

13. It must be stated at the outset that in an election petition like the present which, according to all authorities in England and in India, must be treated like a quasi criminal matter, the burden lies heavily upon the petitioner to make out their allegations in support of their case that the election to Parliament of the respondent is illegal and must be set aside. It is only after the petitioners have discharged this burden that the duty of meeting the charges arises so far as the respondent is concerned.

14. The first charge is that of bribery. The case for the petitioners is that Mr. Manuel Paikeday who stood for election both to the Parliament and to the local assembly was approached and induced to withdraw his candidature for Parliament. This was achieved by a promise being held out by Varkey Mathew and Eapen Cheerankuzhi, who are described as emissaries coming from the respondent, persuading him to agree to withdraw his candidature for Parliament in consideration of the respondent meeting all expenses incurred by him until that date in carrying on his campaign for winning the Parliamentary seat. He was also assured, according to the petitioners, that the expenses that are necessary for fighting the election to the local assembly would be met by or on behalf of the respondent. These overtures were made on the 20th February 1957, just before the time for filing a formal petition of retirement. Mr. Paikeday, according to the petitioners, accepted this suggestion and accompanied by Varkey Mathew and Eapen Cheerankuzhi he went by a motor taxi to the office of the Collector

of Kottayam, who was the Returning Officer, and filed a formal petition requesting that he may be permitted to retire from the contest to the Parliamentary seat. This was accepted and acted upon by the Returning Officer. Then they proceeded to the Returning Officer for the local assembly seat and there Mr. Paikeday, who had previously obtained the consent of Varkey Mathew filed a document to the effect that he had appointed Varkey Mathew as his election agent. After doing both these, they returned to Palai. The respondent's contention, on the other hand, is that he was not interested in inducing Mr. Paikeday to retire from the Parliamentary election because such an act on the part of Mr. Paikeday would result in consolidating the position against him. The respondent was standing as a congress candidate for election to Parliament, and Mr. Paikeday was sponsored by the Praja Socialist Party. There was a communist candidate for Parliament from the same constituency by name Jacob. Another gentleman, by name Ignatious, who was describing himself as an independent candidate, was also contesting the Parliamentary seat from this constituency. If Mr. Paikeday withdrew his candidature for Parliament, the position of the remaining two candidates would be strengthened by the possibility of the votes which Mr. Paikeday anticipated to get becoming distributed among respondent's two rival candidates. It must also be pointed out that there is no direct evidence to connect the respondent with the offer of pecuniary compensation which Varkey Mathew is proved to have given to Mr. Paikeday. This was done mainly in the shape of a promissory note for Rs. 2000 executed by him in favour of a nephew of Mr. Paikeday, by name Mani Paikeday. There is the vague hint that when Mr. Paikeday made the suggestion to Varkey Mathew that he would withdraw if the pecuniary compensation referred to above was undertaken to be paid and also if Varkey Mathew would consent to be his election agent, then Varkey Mathew is alleged to have told Mr. Paikeday that he could give his assent only after obtaining the sanction of the respondent and he was sent in a motor car to the house of the respondent. He returned after some time and informed Mr. Paikeday that he was willing to fulfil the pecuniary obligation referred to above and also to act as the election agent of Mr. Paikeday for the election to the local assembly. There is no direct evidence to connect the respondent with this transaction. Varkey Mathew, no doubt, announced that he was going to the respondent's house and came back after some time, but no witness was present at the alleged interview between Varkey Mathew and the respondent when they were discussing this topic. The respondent's version, on the other hand, is that he was not in his residence on the date in question but had gone to Devicolam on an election tour. The learned counsel for the respondent contends that the respondent, being a Director of the Palai Central Bank Ltd., and admittedly a wealthy person, would have easily found Rs. 2000 in cash instead of making Varkey Mathew execute a promissory note for that amount in favour of Mani Paikeday. This would have eliminated all suspicion because there would then be no documentary evidence to show that any such undertaking was given

by Varkey Mathew. This is a point to be borne in mind in appreciating the evidence on this subject.

15. Stress is laid in the written arguments produced by the first petitioner on behalf of the petitioners on the fact that in paragraph 3 (1) (b) of the petition there is a definite allegation made by the petitioners that "Varkey Mathew had received the money from the respondent as he had been promised" and that the respondent did not deny specifically this allegation of fact in his written statement. It is, therefore, contended that this fact must be presumed to have been proved as the respondent must be deemed to have admitted this allegation in the petition. But this is an incorrect statement because there are parts of the written statement in which this averment is denied. The first is in paragraph 1 containing a general denial of all averments in the petition except those that are specifically admitted by the written statement and the statement in paragraph 8 of the written statement to the effect that the allegations in para 3 (1) of the petition are "false, mischievous and without any bona fides and intended to malign the respondent. They are denied *in toto*". Therefore, it is not correct to say that the statement in paragraph 3 (i)(b) of the petition has not been denied.

16. Coming now to the oral evidence adduced in support of this averment in the petition, there is first of all the evidence of the first petitioner examined as PW 1 who started by saying that Mr. Paikeday was induced to retire from the election to the Parliamentary seat as a result of pecuniary gratification. He describes Varkey Mathew Vellukunnel and Eapen Cheerankuzhi as agents of the respondent who approached Mr. Paikeday and offered this pecuniary gratification and induced him to withdraw. The respondent's evidence is to the effect that he did not appoint anyone as his agent in the election to the Parliamentary seat but that he was himself personally attending to the canvassing of votes. According to PW. 1, the incident occurred on 20th February 1957 when, after obtaining Mr. Paikeday's consent to the suggestions made to him, Varkey Mathew and Eapen Cheerankuzhi took Mr. Paikeday to Kottayam in a taxi to the Collector's office at Kottayam. The first petitioner's version is that all the time he was telling Mr. Paikeday not to withdraw. This he did both in his election office and in the Collector's office but in spite of that he retired. The first petitioner goes on saying that these two persons mentioned by him used to go to the respondent's house and bring money but he admits that he did not go with them. It is an assumption made by him that the money which they brought must have been from the respondent's house because he says that these agents will not bring any money from their funds. He mentions in his evidence that Varkey Mathew had married the respondent's first cousin and that they were closely associated with each other. He also adds that he had not seen the respondent without Eapen Cheerankuzhi accompanying him for the last 20 years. The witness says that he had seen Varkey Mathew bringing money four or five times to Mr. Paikeday's election office. He was put a specific question in cross examination how he knew that the money came from the

respondent and his answer was that Varkey Mathew had himself stated that he would go to Thommachen, which is the name by which the respondent was familiarly known in the locality, and bring money; but admits that he had not seen him take money from the respondent. The next witness whose evidence is material in dealing with this question is PW. 2, Mr. Manuel Paikeday himself. He is very guarded in the evidence that he has given. He starts by saying that until the 20th of February 1957, he had no election agent and that on that day he appointed Varkey Mathew Vellukunnel as his election agent. He had an interview only with Varkey Mathew and Eapen Cheerankuzhi and not with the respondent. Varkey Mathew, according to him, assured him that he would take over the election campaign on his behalf and meet all the expenses from the date he was appointed his election agent. Then the witness adds "I gathered that it was the respondent who would meet the expenses but it was not put to me as such in so many words". Before Varkey Mathew Vellukunnel consented to be Mr. Paikeday's election agent, according to PW. 2, he wanted to consult the respondent. He, therefore sent Varkey Mathew to the respondent's house in a relation's car and it was after coming back that he accepted the suggestion that he would be Mr. Paikeday's election agent. A specific question was put to the witness whether Varkey Mathew was talking terms as the agent of the respondent and the answer was that Mr. Paikeday understood him and Eapen Cheerankuzhi to be agents of the respondent. He admits that he cannot say whether Varkey Mathew had talked to the respondent in between the two talks on that day. Varkey Mathew was pleading lack of funds when he was asked to pay for the election expenses and when Mr. Paikeday suggested that on the security of the promissory note for Rs. 2000 executed by Varkey Mathew and the agreement to execute an *otti* deed for the amount in respect of a building and compound belonging to Varkey Mathew he asked his relations to raise moneys. Towards the promissory note of Varkey Mathew a part payment of Rs. 1400 was made. This amount, according to the witness, was brought by Eapen Cheerankuzhi to Varkey Mathew's house where the witness and the rest of them were waiting and paid into the hands of Varkey Mathew who passed it on to the witness. The witness then gave it to Mani Paikeday, the payee of the note, and asked him to see how much the open envelope in which the currency notes were brought, contained. When Eapen brought the money the parties had a casual talk in the course of which Eapen told the witness that he could not make the payment earlier because he could not contact the respondent earlier. Then the witness states specifically that he did not say in so many words that he got the money from the respondent. When the payee of the note enquired why the total amount was not brought, the maker of the note said that Eapen Cheerankuzhi brought only that much and the balance would be paid as soon as possible. The maker of the note offered to execute a fresh document for the amount but the witness, Mr. Paikeday, suggested that it would be sufficient if an endorsement was made on Ex. L, the promissory note, and

the documents need not be returned. The witness persists in saying that when these two persons were speaking to him about the withdrawal from the Parliamentary constituency election they were representing that they were speaking on behalf of the respondent. The witness says in the course of his evidence that he started his election campaign only in the first week of February and, therefore, by the 9th of February he could not have incurred any appreciable amount of expenses.

17. Along with the evidence of these two witnesses, reference must be made to the evidence of PW. 3, David Mahapillai, who describes himself as a pleader of the Travancore State. His pleadership certificate was issued by the Travancore High Court in 1927 under the old rules then prevailing. He had practised as pleader for 20 years in Palai in the Munsiff's and Magistrate's Courts there but he does not practise now, having stopped practising 8 years ago. He says he new the respondent intimately. He is also an intimate friend of Mr. Paikeday. In the course of his evidence he says that he did not favour the idea of Mr. Pikeday standing for election to Parliament. He therefore, suggested to him to withdraw from the Parliamentary seat. One of the reasons why he made this suggestion was, according to him, that it would be difficult for him to fight for both seats (Parliament and local assembly) simultaneously. He was also against the idea of two Catholic friends fighting in the constituency which, according to him, was unhealthy. It will thus be seen that there was in addition to the alleged pecuniary gratification, moral persuasion of an intimate friend of Mr. Paikeday to withdraw from the Parliamentary constituency. It is difficult to say whether it was the pecuniary gratification or the moral persuasion that prevailed and induced Mr. Paikeday to withdraw from the Parliamentary election.

18. It is then contended that Varkey Mathew and Eapan Cheerankuzhi should be presumed to be the agents of the respondent. The Tribunal is bound to act upon the evidence placed before it and not upon speculations and imaginary assumptions. It is, no doubt, true that agency in the case of an election matter has a wider scope and a wider meaning than agency in the law of contracts. But to establish such agency there must be the minimum of evidence to warrant the Tribunal holding that an agency even in the extended sense is established. There is no such evidence in the present case. The fact that the two persons mentioned in the written arguments were really the agents of the respondent is not warranted by the evidence in this case. I am, therefore, compelled to hold that the charge of bribery alleged in the petition as against the respondent has not been proved.

19. The next question relates to the pastoral letter, Ex. A. On a careful perusal of that letter it seems to me that it cannot have any application to an election to the Parliament. The reference in the pastoral is that voting should be done in such a manner as to lead to the establishment of a stable Government by which one can only infer a stable Government for the Kerala

State. The election of the respondent to Parliament cannot produce that result and his entry into Parliament cannot have any bearing on the establishment of a stable Government in this State. This is manifest from the reference in the pastoral to the President's rule which can have bearing only on the Government in the Kerala State. Assuming for the sake of argument that the object of the pastoral is to recommend to the voters that they should vote for the congress, it may be regarded merely as a recommendation made by the Lord Bishop who issued the pastoral. In the *Southern Division of Meath Case* reported in 4 O'M. & H. 130, the principle relating to the question of undue influence by pastoral letters is stated as follows:—

> "The rule of law as laid down by Mr. Justice Fitzgerald—the late Lord Fitzgerald—in the *Longford Case* (2 O'M. & H. 6) is in substance this—that it is the undoubted right of the clergy to canvass and in duce persons to vote in a particular way, but that it is not lawful to declare it to be a sin to vote in a different manner, or to threaten to refuse the Sacraments to a person for so doing".

There is nothing in Ex. A to show that it was declared to be a sin to vote in a different manner or that it contained a threat to refuse the Sacraments for persons so doing. Again, the learned Judge says:

> "It must be observed, however, that the Bishop's pastoral does not directly advance such a proposition, and I would suggest, if it was intended to sustain it in its application to the present case, evidence would have been given of the established doctrine of the Catholic Church upon the subject".

The evidence of the majority of the witnesses in this case, even those who were called on behalf of the petitioners, is to the effect that Ex. A contained only a recommendation and that it was opened to the voters either to accept or reject that recommendation. It is only meant for their guidance and not as a compulsion to force their hands to vote in a particular manner. With the excemption perhaps of one witness called for the petitioner, Pw. 13, Rev. Fr. G. C. Teelar, who said that non-observance of the recommendation would be followed by severe action by the Bishop, in ecclesiastical matters, there is no other material on which such an assumption can be drawn by this Tribunal. No doubt, Pw. 4 Ittiavirah stated that persons who did not obey the mandate contained in the pastoral will not go to heaven. This question is discussed in detail at page 337 of Rogers on Elections, Vol. II, 20th Edition, (1928) where reference is made to the judgment of Fitzgerald J. in the *Longford Case* already adverted to. It is stated, referring to the influence of the catholic priest.

> "In the proper exercise of that influence on election the priest may counsel advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale, but he may not appeal to the fears, or terrors, or superstition, of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter".

At page 339 it is again stated that it is the exercise of undue influence, whether by clergymen or others, that is forbidden by the Statute,

> "A clergyman is, therefore, entitled by all legitimate means to endeavour to persuade others to adopt his own political opinions: (Tipperary (1870), 2 O' M. & H. 31)."

20. As already pointed out in Ex. A there is nothing that comes within the purview of the forbidden clauses of these decisions. The law cannot be different in elections in our country merely because the members of the congregation are described as being credulous and likely to be misled.

21. Before leaving this topic, brief reference will have to be made to the examination of the Bishop of Palai on commission. Before the formation of the Kerala State, Bishops in the Travancore-Cochin area were exempt from personal attendance in court. But now they do not enjoy that privilege. When the petitioners wanted to summon the Bishop of Palai to appear before this Tribunal and give evidence he appeared by learned counsel and produced a medical certificate disclosing that he was not in a fit condition to undertake the long journey by road from Palai to Ernakulam about 55 miles, in view of his physical condition and in view of the doctor's opinion that he should have complete rest for at least one month. This was supported by a medical certificate obtained from the Civil Surgeon of Palai. The petitioner's objected to the request being granted but since there was no medical opinion contra orders were passed allowing the examination of the Bishop on commission. His evidence has been recorded in detail. From the record, it is obvious that a number of questions were put which had no bearing on the merits of the present case.

22. If, as already stated, Ex. A has nothing to do with the election to Parliament, it cannot amount to undue influence for the purpose of avoiding that election. I, therefore, hold that there was no unwarranted or objectionable spieitual—influence exercised in this case by Ex. A with regard to the controversy before this Tribunal.

23. The next contention urged on behalf of the petitioners is that in a catholic newspaper, Deepika, which is widely read by the catholic voters of the locality, there was an appeal made

on communal and religious grounds for supporting the congress candidates (see the evidence of Pw. 7). The papers relied upon have been marked as Exs. B, C, D, E, F, G, H, J and K. In these newspapers there is no propaganda based upon grounds of caste or community to affect the validity of the election under section 123 (3) of the Act. In almost every important election, newspapers may support the candidature of particular individuals and so long as they do it within reasonable limits it cannot affect the validity of the election. Therefore, this contention urged on behalf of the petitioners also is not well-founded.

24. The next complaint is that voters were taken in two motor vehicles. If this argument is accepted, then the short answer which the respondent's learned counsel urges is that there was a definite direction given by the respondent to all his workers not to use motor vehicles for conveying voters to the polling booths and if any worker contravened that direction, the respondent cannot be held responsible for it. In section 100 (2) (b) an exception is recognised in the case of corrupt practices which are of a trivial and limited character. The learned counsel for the respondent points out that there were four lakhs of voters in the constituency which elected the respondent and even if the allegations made against the respondent are taken as established, it only proves that four persons out of four lakhs were taken to the polling booth in one of the motor cars. Even on this point there is no reliable evidence. Of the two motor vehicles, only one was the property of the respondent. The other was not his property and it does not appear that any agent or person authorised by the respondent was responsible for taking these four or five voters to the polling booths. The respondent's learned counsel relies strongly upon Ex. IV which is a statement issued by the congress party for the guidance of candidates standing for election on the congress ticket. The respondent used to hold rallies of his workers and impress upon their minds the importance of these directions and there is nothing to indicate that the respondent had approved of the conveying of four or five voters to the polling booth in his jeep. Nor is there anything to show that he was aware of it. He has said that he had no election agents whatsoever in the election because he wanted to avoid such allegations against him. On this question also my finding is against the case of the petitioners.

25. The first petitioner is a vigorus public worker. He is the son of a very respectable gentleman who held a temporary commission in the I. M. S. during the first great war but he died more than 25 years ago and did not have any opportunity of impressing upon the first petitioner the code of behaviour which had his approval. Mixing himself in election campaigns on a number of previous occasions, he might have been drawn into the sphere of undesirable tactics. From his behaviour in the trial of this petition, it is obvious that although he is a very good-natured and sincere worker who indulges in hero worship of his favourite politician, Mr. Manuel Paikeday, he has not been able to secure the right kind of evidence to

establish the points which he had in view and when witnesses did not respond to his appeal or having come they give evidence not in conformity with the case set forth in the petition, he seems to have lost his head very frequently and instead of blaming the witnesses, he seems to have nourished ill-will towards the Tribunal which has nothing to do with the result of the election. The Tribunal is here to function impartially on the evidence actually placed before it and it is regrettable that this aspect of justicee being rendered in an impersonal manner without any bias or prejudicehas not been fully appreciated by the first petitioner or by his supporters or patrons.

26. The first petitioner was deeply interested in seeing that Mr. Manuel T. Paikeday got elected to the local legislature. The history of this gentleman shows that at every election he offered himself as a candidate but unfortunately owing perhaps to forces over which he had no control he was defeated on every previous occasion and had to forfeit his deposit on certain occasions as he had in the last election to the State Assembly. The respondent cannot be held responsible for these unfortunate incidents suffered by Mr. Paikeday

27. In view of my findings on the four points which arise for determination in this case, as stated by the petitioners in their written arguments, my findings on issues 2, 3, 4, 5, 6 8, 9, 10 and 11 are in the negative. My finding on issue 12 is that the conveying of four or five electors to the polling station was in contravention of the specific direction by the respondent and on issue 13 that such behaviour on the part of third parties was of a trivial and limited character as contended on behalf of the respondent.

28. In the result, since there is no evidence to support the contentions of the petitioners the case must fail and it is accordingly dismissed with costs. There were more than 36 hearings of this petition. On certain occasions, respondent's day costs were reserved. In view of the large number of adjournments I fix the amount of costs at a consolidated figure of Rs. 1500. The costs of the commission for examining the witness, Bishop of Palai, were borne in the first instance by the Bishop. The commissioner's fee was Rs. 35. This will be paid to the Bishop out of the total amount of costs awarded by this order. The amount deposited as security for costs shall be proceeded against first in executing the order for costs.

23rd December 1957.

C. Kunhi Raman,

Judge, Election Tribunal.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1958.